

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Tenth Floor
San Francisco, CA 94102
(415) 703-5050



August 15, 2001

William W. Sanders
Labor Compliance Officer
Department of Transportation
Northern Region
P.O. Box 911
Marysville, CA 95901-4311

Re: Public Works Case No. 2000-075
Caltrans I-5 Repair/Redmond's Concrete and Materials

Dear Mr. Sanders:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based upon my review of the facts of this case and an analysis of the applicable law, it is my determination that the driving and operation of the "Zim Mixer" trucks owned by Redmond's Concrete and Materials ("Redmond") is a public work subject to the payment of prevailing wages.

In this case, the California Department of Transportation ("Caltrans") awarded a written contract to C.C. Myers, Inc. ("Contractor") to remove patches of unsound concrete on Interstate 5, downtown Sacramento, and replace them with rapid hardening concrete ("Project"). The contract price was \$97,000. This work took place on consecutive Friday and Saturday evenings (8:00 p.m. to 5:00 a.m.) for a total of approximately 15 to 16 night shifts. Contractor retained Redmond's to provide the necessary concrete for the Project.

Redmond's is in the business of providing concrete mix and landscape materials for sale to the public. Redmond's specializes in providing rapid setting concrete for roadway repairs using trucks referred to as "Zim Mixers." These trucks store dry materials (sand, gravel and cement) in separate compartments, which can then be mixed on-site, producing the rapid hardening concrete. The truck driver controls the amount of wet cement produced by setting a dial on the truck and pulling several levers.

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On this Project, Redmond's sent out one truck per night shift. The truck would arrive around midnight and leave before 4:00 a.m. Because only one Zim Mixer was used per shift, most of the dry materials used to produce the rapid setting concrete were stored at a staging area set up by Contractor near the I-5 project site. Once a week Redmond's would deliver sand, rock and cement to this staging area to facilitate the following weekend's mix and pour of the concrete.

While the Zim Mixer was on the construction site, the truck driver employed by Redmond's would park the mixer next to the work area and point the chute towards the roadway section to be resurfaced. The driver would then set the dial for the amount of concrete necessary for that particular repair and would pull the necessary levers to have the dry materials mixed with water, resulting in wet concrete being discharged into the portion of roadway that was being repaired.

As the rapid hardening cement was discharged, Contractor's crew would simultaneously spread and level the concrete. The driver would then move the truck to the next repair location, and the same process would begin. Once the Zim Mixer ran out of dry material, the driver would bring the truck to the staging area, where the Contractor's crew would load the dry materials onto the truck by using its own heavy equipment.

Labor Code section 1720(a) defines public works in relevant part as: "Construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds." In this case, the Project is a public work because it involves a contract between Caltrans and Contractor for the replacement of several portions of Interstate 5 and is paid for out of public funds.

Labor Code section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." Your question is whether the work performed by Redmond's drivers is covered under the prevailing wage laws. For the reasons stated below, Redmond's drivers are deemed to be employed upon a public work because they were employed by subcontractors in the execution of a public work contract between Redmond and Contractor.

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In *O.G. Sansone v. Department of Transportation* (1976) 55 Cal.App. 3d 434, the Court set out four principal criteria for the denomination whether an employer is a contractor or a materials supplier: (1) whether the employer is in the business of selling supplies to the general public; (2) whether the plant from which the material is obtained is established specially for the particular contract; (3) whether the plant is located at the site of the work; and, (4) whether the materials being hauled are immediately incorporated into the project with no re-handling out of the flow of construction. The Sansone Court held that, where the materials are immediately incorporated into a project with no re-handling outside the flow of construction, the delivery of the materials is so functionally related to the process of construction that the drivers are performing an integral part of the contractor's obligations under the contract and therefore should be paid prevailing wages.

Redmond's and Contractor assert that the drivers' work is a natural extension of Redmond's function as a materials supplier to the Project and therefore exempt from the prevailing wage laws. While it is true that employers of bona fide material suppliers are excluded from prevailing wage requirements, in this case, the work performed by Redmond's on the Project falls outside the materials supplier exemption.

Applying the Sansone criteria to the case at hand, Redmond's is in the business of selling ready mix and specialized concrete to the general public. The plant from which the concrete is obtained was not established specially for the contract with Contractor, nor did Redmond's set up a temporary concrete plant at the job site.

It is under the fourth criterion that Redmond's fails to meet the definition of a materials supplier. Here, the drivers transported the dry materials from both the cement plant and the temporary stockpile directly to the repair site. In the Zim Mixer they mixed the materials with water to form rapid hardening concrete, then directed the chute into the exposed roadbed where they set the truck dials to discharge the wet concrete. Drivers repeated these tasks as they moved along the roadbed where repairs were necessary. Contractor's employees simultaneously spread and leveled the wet concrete.

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Because the material hauled by Redmond's drivers was immediately incorporated into the Project with no re-handling out of the flow of the construction, the drivers were performing an integral part of Contractor's obligations under the contract. Accordingly, Redmond's Zim Mixer drivers of the Zim Mixer trucks are deemed to be employed on a public work pursuant to Labor Code sections 1720 and 1772, and prevailing wages must be paid them.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in cursive script, reading "Stephen J. Smith".

Stephen J. Smith
Director

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